

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

LUTHER WHITMORE, et al., )  
                               )  
Plaintiffs,                 )  
                               )  
vs.                         )              Case No. 4:11CV1170 RWS  
                               )  
AMERICAN DREAM LOGISTICS, )  
INC., et al.,                 )  
                               )  
Defendants.                 )

**MEMORANDUM AND ORDER**

This matter is before me on plaintiffs' motion to for leave to serve defendant Tihomir Markovic by publication. Plaintiffs' motion will be denied without prejudice because plaintiffs cite no authority in the Federal Rules of Civil Procedure for service by publication in these circumstances. Although plaintiffs may serve this defendant consistent with Missouri law, plaintiffs do not cite any Missouri Rules of Civil Procedure that would permit service by publication in this circumstance, either. The affidavit in support of the motion does not satisfy Missouri Rule of Civil Procedure 54.20(f) because there is no evidence at this time that Markovic has refused service. Plaintiffs may request issuance of alias summons or attempt waiver of service in accordance with Rule 4(d) of the Federal Rules of Civil Procedure, but they may not serve this defendant by publication unless they are authorized to do so under the Federal or Missouri Rules of Civil Procedure.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiffs' motion for service by publication [#49] is denied without prejudice.



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RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 24th day of January, 2012.